

July 23, 2010

Client-Matter: 43077-001

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

**Re: CC Docket No. 02-6
Request for Review of Universal Service Administrative Company's
Administrator's Decision dated May 24, 2010 Denying Appeal
(FRN 1251325)**

Dear Secretary Dortch:

Vector Resources, Inc. ("Vector") hereby appeals the Universal Service Administrative Company's ("USAC") Administrator's Decision dated May 24, 2010 Denying Vector's May 7, 2010 Appeal (the "Decision") concerning Funding Request Number ("FRN") 1251325. The law firm of Manatt, Phelps & Phillips, LLP represents Vector with respect to this appeal.

I. FACTUAL BACKGROUND

In or around March 2008, Vector realized that it had issued invoices to USAC and included charges totaling \$13,232.00 for ineligible equipment for "GE SFP, LC Connector SX transceiver" (hereinafter referred to as "GBICs"). At the same time, Vector determined that Vector had not issued an invoice to USAC for labor hours rightfully and legally incurred for eligible services in the amount of \$12,906.27, which would mean a credit to USAC in the amount of \$325.73. Accordingly, in July 18, 2008, Vector issued a payment to USAC in the amount of \$325.73. USAC cashed the check. (Attached hereto as Exhibit "A" is a copy of Vector's July 18, 2008 Letter; the spreadsheet backup for the credit; and a copy of the check made payable to USAC (hereinafter referred to as "July 2008 Invoice.")

On June 2, 2009, USAC contacted Vector in response to a Federal Communications Commission ("FCC") audit finding relating to FRN 1251325 (hereinafter referred to as the "USAC June Audit"). In the USAC June Audit, USAC requested information from Vector about the "GBIC Replacement Credit" totaling \$13,232.00 and the additional labor billed totaling \$12,906.24. (Attached hereto as Exhibit "B," is a copy of the June 2, 2010 email and letter.) USAC acknowledged that it had received Vector's payment in the amount \$325.73. (*Id.*) On

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June 9, 2009, USAC contacted Vector requesting additional information regarding FRN 1251325. (Attached hereto as Exhibit "C," is a copy of the June 9, 2009 email from USAC.)

On June 9, 2009, Vector provided its response to the USAC June Audit and included a detailed invoice for FRN 1251325, which supported the "GBIC Replacement Credit" and the additional labor hours billed. (Attached hereto as Exhibit "C," is a copy of the email chain between USAC and Vector, including Vector's June 9, 2009 email response, and attached as Exhibit "D," is a copy of the invoice for FRN 1251325, which was submitted with the June 9, 2009 response.)

On March 8, 2010, Vector received a Notification of Improperly Disbursed Funds from USAC (the "Notification") asking Vector to pay USAC \$1,175.63. USAC acknowledged that all GBICs had been properly credited but alleged that associated labor costs for the installation of the GBICs were not credited. (Attached hereto as Exhibit "E," is a copy of the March 8, 2010 Notification.) The Funding Disbursement Recovery Report in the Notification specifically stated as follows:

Funding Request Number	1251325
Contract Number:	0550078
Services Ordered:	INTERNAL CONNECTIONS
Billing Account Number:	310-436-1008
Funding Commitment:	\$15,688,089.29
Funds Disbursed to Date:	\$14,180,911.72
Funds to be Recovered from Service Provider:	\$1,175.63
Disbursed Funds Recovery Explanation:	

After a thorough investigation, it has been determined that funds were improperly disbursed on this funding request. During the course of an audit it was determined that funds were disbursed for products and/or services that were not approved on the Form 471 and the products and/or services do not meet the requirements for an eligible service substitution. During the audit it was determined that the service provider misinterpreted the applicant request. The applicant requested equipment with extra space for GBIC expansion and the service provider supplied the equipment with extra GBICs installed in the expansion slots. The service provider on a later invoice did credit back the cost of the equipment and taxes, however the associated labor costs were [sic] missed. FCC rules require that applicants indicate on the Form 471 and item 21 attachments the services and/or equipment for which they are seeking funding so

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that USAC can determine whether the services and/or equipment are eligible for funding. Since the services were invoiced via a SPI, this violation was caused by an act or omission of the service provider because the service provider is responsible for ensuring that it provides and invoices USAC for only the products and/or services equipment that USAC approved. On the SPAC Form at Block 2 Item 10, the authorized person certifies on behalf of the service provider that the Service Provider Invoice Forms that are submitted by this service provider contain requests for universal service support for services which have been billed to the service provider[']s customers on behalf of schools, libraries, and consortia of those entities, as deemed eligible for universal service support by the fund administrator. Accordingly, USAC will seek recovery of the \$1,175.63 of improperly disbursed funds from the service provider.

On May 7, 2010, Vector appealed the Notification (the "Appeal"). (Attached hereto as Exhibit "F," a copy of the Appeal filed with USAC by Vector.¹) Vector addressed the issues raised in the Notification, and explained the credit for **all GBIC associated labor costs**. (*Id.*) In the Appeal, Vector requested a determination that Vector did not owe any amounts to USAC under FRN 1251325 because all amounts had been properly credited. (*Id.*)

On May 24, 2010, USAC issued the Decision, which stated, in relevant part, as follows:

Upon review of the appeal letter and all relevant documentation, USAC has determined that Vector Resources, Inc., SPIN 143020726 owes USAC Improperly Disbursed Funds for labor costs associated with GBIC transceivers in the amount of \$1,175.63. The record shows that as a result of an audit, on June 2, 2009, USAC contacted and requested Vector to provide copy of the invoice where the amount of \$13,232.00 owed to USAC was credited. The invoice details submitted by Michael Momoh on June 9, 2009 show that Vector credited USAC the cost of the equipment and taxes. Additionally, this documentation clearly shows that the associated labor cost for the above mentioned equipment was not credited to USAC. On appeal, you have not provided any evidence that USAC erred in its decision to seek recovery of Improperly Disbursed Funds from Vector Resources, Inc. Subsequently, your request that USAC withdraw the Notification of Improperly Disbursed Funds dated March 8, 2010 has been denied.

(Attached hereto as Exhibit "G," is a copy of the Decision.)

As discussed in detail below, Vector believes that the foregoing facts support the basis for its appeal before the FCC.

¹ Attached hereto as Exhibit "H," is a courtesy copy of additional supporting documents provided by Vector in the Appeal.

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II. GROUND'S FOR APPEAL

Vector submits this appeal on the grounds that (1) USAC erred when it performed its initial review of Vector's July 2008 Invoice, Vector's USAC June Audit response and the Appeal; (2) USAC could have identified an error by Vector by the information USAC had on hand during its review but failed to request such information; and (3) the Appeal provided documentation to correct an incorrect USAC assumption.²

According to the Decision, USAC denied the Appeal because the audit response documentation provided by Vector on June 9, 2009 "clearly show[ed] that the associated labor cost for the above mentioned equipment was not credited to USAC" and that on appeal, Vector failed to provide any evidence that USAC erred in its decision. (Exhs. C, D & F.) This is incorrect. The documentation provided by Vector on June 9, 2009 and evidence submitted in support of the Appeal demonstrate that Vector properly credited USAC for all labor charges associated with ineligible GBIC transceivers. (*Id.*)

Vector believes USAC's confusion may stem from the charges and credits applied at Sierra Vista Elementary School. (*See* the tab entitled "E Detail SIERRA VISTA ES" ("Sierra Vista spreadsheet") in Ex. D.) In approximately March 2008, Vector realized that it had improperly invoiced 76 labor hours under "Workstation Cable Installation," when these labor charges should have been applied to "Active Networking Hardware." Accordingly, in the invoice submitted in April 2008 and as evidenced by the documentation sent to USAC on June 9, 2009, Vector credited USAC for the labor hours improperly designated as "Workstation Cable Installation." (*Id.*) The credited labor hours can be seen at line 49, columns N and O of the Sierra Vista spreadsheet. Vector then applied these labor charges to the appropriate category, "Active Networking Hardware." This charge is evidenced in line 152 at columns N and O in the Sierra Vista spreadsheet. (*Id.*)

At the same time that Vector was applying the mis-categorized labor hour charge under "Active Networking Hardware," Vector was also crediting USAC .5 labor hours for the 2 ineligible GBICs invoiced for Sierra Vista Elementary School (or .25 labor hour per GBIC at an hourly rate of \$95). This credit can be seen at line 113, columns N and O of the Sierra Vista spreadsheet. (Ex. D.) Because Vector credited the .5 labor hours associated with ineligible GBICs at the same time it was charging for the 76 mis-categorized labor hours, the entry for labor hours under "Active Networking Hardware" showed a net charge of 75.5 hours for a total amount of \$7,172.50. In other words, the 75.5 labor hour charge accounts for the .5 labor hour credit given to USAC for labor costs associated with the ineligible GBICs.

² These grounds for appeal are identified in USAC's Appeals Guidelines. These guidelines can be found at <http://www.universalservice.org/sl/about/appeals/appeals-guidelines.aspx> and <http://www.sl.universalservice.org/reference/AppealsSLDGuidelines.asp>.

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The credit for the 55 ineligible GBICs were applied to the following schools: Ann, Atwater, El Sereno, Elysian, Garvanza, Gates, Hillside, Latona, Michel Torena, Sierra Vista and Solano. For these GBICs, Vector credited USAC for 13.75 hours of labor at \$95/hour for a subtotal in the amount of \$1,306.25. Because SLD is only charged 90% of the service provider's invoice price, the total credit to USAC was **\$1,175.62**. This is consistent with the fact that this amount was properly credited to USAC and that no further payment is owed to USAC.

Based on the foregoing, Vector requests that its appeal be granted. Vector further requests that the FCC find that Vector credited all ineligible GBICs amounts and associated labor to USAC, issued the proper payment in the amount of 325.73, and that USAC is not entitled to further payment from Vector.

III. REQUIRED INFORMATION

A. Billed Entity Information

Billed Entity Name: Los Angeles Unified School District
Form 471 Application No.: 442528
Billed Entity No.: 143454
FCC Registration No.: 0012223764
Funding Request No.: 1251325
SPIN: 143020726
Funding Year: 2005

B. Contact Information

The person who is authorized to submit and discuss this appeal is:

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IV. RELIEF REQUESTED

Vector hereby requests that the FCC grant its appeal.

Vector also requests a finding that Vector credited all ineligible GBICs amounts and associated labor to USAC, issued the proper payment described above, and that USAC is not entitled to further payment from Vector.

Lastly, Vector requests that the FCC prevent USAC from taking any red light action, or if appropriate, reverse any red light action taken by USAC against Vector.

Thank you.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'RWK', followed by a stylized flourish.

Randall W. Keen

RWK:SNW
Enclosures

cc: Robert Messinger (Vector Resources)
Catherine Banker (Vector Resources)
Dr. James Alther, Los Angeles Unified School District (via email)
Michael Kraft, Senior Manager of Invoicing (USAC) (via email)